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2 MARK E. VOVOS, #4474  
3 2721 S. Pittsburg  
4 Spokane, WA 99203  
5 (509) 326-5220  
6 *Attorney for Hunter Bow O'Mealy*

7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 United States of America, )  
11 )  
12 Plaintiff, ) **NO. 2:21-CR-00142-TOR-1**  
13 vs. ) Motion for Release Pursuant to  
14 ) 18 U.S.C. 3142 and Memorandum  
15 ) in Opposition to Government's  
16 Hunter Bow O'Mealy, ) Motion for Detention Hearing  
17 )  
18 Defendant. ) **Hearing: November 10, 2021**

19  
20 **INTRODUCTION**

21 Mr. Hunter Bow O'Mealy appears before this Court on the government's  
22 Motion for Detention pursuant to 18 USC 3142(e) and (f). Mr. O'Mealy was  
23 arrested on or about October 15, 2021. He made an initial appearance on a Rule 5  
24 hearing in the District of Arizona on October 20, 2021, and was held pending  
25 proceedings in the Eastern District of Washington. He was charged in a  
superseding indictment as follows: 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(vi), 846  
Conspiracy to Distribute 400 Grams or More of Fentanyl (Count 1); 21 U.S.C.

1 § 841(a)(1), (b)(1)(B)(vi) Distribution of 40 Grams or More of Fentanyl (Counts 2-  
2 3); and 21 U.S.C. § 853 Forfeiture Allegations.

3 **FACTS RE: HUNTER BOW O'MEALY**

4 Hunter Bow O'Mealy is 18 years of age and born in Tacoma, Washington  
5 on February 18, 2003, to Maralyn O'Mealy.  
6

7 Hunter Bow O'Mealy has one sister that is 33 years old and lives in the State  
8 of Colorado. His father, Todd O'Mealy, is a chiropractor, working for the United  
9 States Government, DOD, treating soldiers and special forces. His mother,  
10 Maralyn O'Mealy, works as a professional biller for businesses. Hunter Bow  
11 O'Mealy is a life-long resident of the State of Washington.  
12

13 The family has a home in Packwood, Washington, and Hunter Bow  
14 O'Mealy would reside there if his pre-trial release conditions are granted (address  
15 will be provided to the Court and Pre-Trial Services).  
16

17 Mr. O'Mealy received his education in the State of Washington and attended  
18 Montessori School, Grades 1 through 3, Port Defiance Elementary School,  
19 Grades 3 through 5, Mason Middle School, Grades 6 through 8, and Wilson High  
20 School in Tacoma, Washington, through his junior year. During the COVID  
21 pandemic, he was finishing his high school education on-line and plans to return to  
22 Wilson High School for his senior year.  
23  
24

1 While in high school, Hunter Bow O'Mealy has worked for over a year as a  
2 cook at Papa Johns in Tacoma, Washington.

3 **REQUEST FOR RELEASE**

4 The defendant, Hunter Bow O'Mealy, by and through his attorney, Mark E.  
5 Vovos, hereby requests that this Court grant conditions of release pursuant to 18  
6 U.S.C. §3142(c).

7  
8 1) 18 U.S.C. §3142(c)(B)(i): That Hunter Bow O'Mealy shall remain at  
9 his residence located in Packwood, Washington, with electronic monitoring as his  
10 primary residence under house arrest, except for work and court.

11  
12 2) 18 U.S.C. §3142(c)(B)(iv): That Hunter Bow O'Mealy shall not  
13 travel from Western Washington without prior approval of the Federal Pre-Trial  
14 Services, except for court appearances or work, if approved.

15  
16 3) 18 U.S.C. §3142(c)(B)(v): That Hunter Bow O'Mealy shall not have  
17 any contact with any witnesses in this case.

18 4) That Hunter Bow O'Mealy shall comply with all rules and regulations  
19 of Pre-Trial Services.

20  
21 5) 18 U.S.C. §3142(c)(b)(xi): That Hunter Bow O'Mealy shall report as  
22 ordered by the Court to the Pre-Trial Services located in Spokane, Washington.

1           6)    18 U.S.C. §3142(c)(B)(viii): That Hunter Bow O’Mealy shall refrain  
2 from possessing a firearm, destructive device, or other dangerous weapon.

3           7)    18 U.S.C. §3142(c)(B)(x): That Hunter Bow O’Mealy shall refrain  
4 from the use of alcohol, any narcotic drug or any other controlled substances,  
5 including marijuana, except that as prescribed by a licensed medical practitioner.  
6

7           8)    If ordered, Hunter Bow O’Mealy would comply with all rules and  
8 regulations for electronic monitoring, including paying for the full cost of any such  
9 electronic monitoring.  
10

11          9)    That Hunter Bow O’Mealy shall remain employed at White Pass Ski  
12 Resort, where he has a job.

13          10)   That Hunter Bow O’Mealy would comply with all curfew hours as  
14 ordered by the Court.  
15

16          11)   That Hunter Bow O’Mealy execute an agreement to forfeit, upon  
17 failing to appear as required, property of a sufficient unencumbered value,  
18 including money, as is reasonably necessary to assure his appearance. He will  
19 provide the Court with proof of ownership of the value of the property, along with  
20 information regarding existing encumbrances as the Court may require.  
21

22          12)   That Hunter Bow O’Mealy would cooperate with authorities in the  
23 collection of a DNA sample.  
24

1           13) 18 U.S.C. §3142(c)(12)(xii): If required, Hunter Bow O'Mealy and  
2 his parents shall execute a bail bond with solvent sureties.

3           14) That Hunter Bow O'Mealy would appear at all future hearings.

4           15) That Hunter Bow O'Mealy will sign any and all forms, including a  
5 199C.  
6

7           16) That Hunter Bow O'Mealy would remain in contact with his lawyer  
8 and call him at least twice per week.

9           17) That Hunter Bow O'Mealy shall surrender any passport if he has one,  
10 and shall not apply for a new one during the pendency of this case.  
11

12           18) That Hunter Bow O'Mealy would submit to UA testing as directed, as  
13 well as any substance abuse evaluation and recommended treatment.  
14

### 15           **REQUIREMENTS OF THE BAIL REFORM ACT**

16           The Bail Reform Act of 1984, 18 U.S.C. §3142 et seq., requires the release  
17 of a person facing trial under the least restrictive condition or combination of  
18 conditions that will reasonably assure the appearance of the person and the safety  
19 of the community. Only in rare circumstances should release be denied. *Sellers v.*  
20 *United States*, 89 S.Ct. 36, 21 L.Ed.2d 64 (1968). 18 U.S.C. §3142; *United States*  
21 *v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985). In fact, Title 18 U.S.C.  
22 §3142(b) mandates pre-trial release ("shall order the pre trial release") on personal  
23  
24

1 recognizance or an unsecured appearance bond unless the Court determines that  
2 such will not reasonably assure the person's appearance or will endanger the safety  
3 of another person or the community. Only in rare circumstances should release be  
4 denied and doubts regarding the propriety of release should be resolved in Hunter  
5 Bow O'Mealy's favor. *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir.  
6 1991), citing *Motamedi*, 767 F.2d at 1405.

8         If the Court determines that a personal recognizance or unsecured release  
9 will not reasonably assure appearance or will endanger any other person or the  
10 community, 18 U.S.C. §3142(c) still mandates release ("shall order the pre-trial  
11 release") subject to certain specified conditions. The conditions, which must  
12 include that the person not violate any federal, state or local law, must be the least  
13 restrictive conditions necessary to reasonably assure the person's appearance and  
14 the community's safety. The provision that the conditions "reasonably assure"  
15 appearance and safety does not require a guarantee of an appearance or safety.  
16 *United States v. Fortna*, 769 F.2d 243 (5th Cir. 1985), *cert. denied*, 479 US 950  
17 (1986); *United States v. Orta*, 760 F.2d 887 (8th Cir. 1985). It requires an  
18 "objectively reasonable" assurance of community safety and the defendant's  
19 appearance at trial. *Orta*, at 892. The Court stated in the case of *United States v.*  
20 *Gentry*, 455 Fed. Supp.2d 1018 (2006):

## BAIL REFORM ACT OF 1984

“The Bail Reform Act [the ‘Act’], 18 U.S.C. §§ 3141-3150, authorizes and sets forth the procedures for a judicial officer to order the release or detention of an arrested person, pending trial, sentence, and appeal.” The Act requires a district court to order a defendant detained pending trial if “no condition or combination of conditions will reasonably assure the appearance of the person as required....” 18 U.S.C. § 3142(e); *United States v. Gebro*, 948 F.2d 1118, 1121 (9<sup>th</sup> Cir. 1991); *United States v. Motamedi*, **767 F. 2d 1403, 1405 (9<sup>th</sup> Cir. 1985)**. “The district court has a duty to engage in a two-step inquiry before ordering a defendant released or detained pending trial.” *United States v. Hollender*, 162 F.Supp.2d 261, 264 (S.D.N.Y. 2001); 18 U.S.C. § 3142(b) and (e). First, the district court must make a finding as to whether the defendant presents a “serious risk that such person will flee” if not detained. 18 U.S.C. § 3142(f)(2)(A). “Second, if the defendant is likely to flee, the district court must determine whether some set of conditions would sufficiently vitiate that risk.” *Hollender*, 162 F.Supp.2d. at 264; 18 U.S.C. § 3142(g).

FN4. David N. Adair, Jr., Federal Judicial Center, *The Bail Reform Act of 1984* (3<sup>rd</sup> Ed.2006), p. vii.

[1] In making the determination whether conditions exist that would reasonably assure a defendant’s appearance, Section 3142(g) requires the district court to take into account four statutory factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and (4) the nature and seriousness of the danger to any person or community that would be posed by the person’s release. 18 U.S.C. § 3142(g). The weight to be accorded to each of these factors rests in the Court’s discretion. *Hollender*, 162 F.Supp.2d at 264. The Act, however, mandates

1 release of a defendant facing trial under the “least restrictive”  
2 condition or combination of conditions that will reasonable assure the  
3 appearance of the defendant as required. 18 U.S.C. § 3142(c)(1)(B);  
4 **Motamedi, 767 F. 2d at 1405.** The burden of proof rests with the  
5 Government which must establish risk of flight by a preponderance of  
6 the evidence, not by the higher standard of clear and convincing  
7 evidence. **Id. at 1406.** Reminding the district courts of the  
8 presumption of innocence and its corollary that the right to bail should  
9 be denied only for the strongest of reasons, the **Motamedi** court  
10 indicated that “[o]nly in rare circumstances should release be  
11 denied,” and “[d]oubts regarding the propriety of release should  
12 be resolved in favor of the defendant.” **Id. at 1405, 1407.**

### 9 FACTORS TO BE CONSIDERED

10 Section 3142(g) sets forth the factors the judicial officer shall take into  
11 account:

- 13 (1) the nature and circumstances of the offense charged;
- 14 (2) the weight of the evidence;
- 15 (3) the history and characteristics of the person including:
  - 16 - the defendant's character
  - 17 - physical and mental condition
  - 18 - family ties
  - 19 - employment
  - 20 - financial resources
  - 21 - length of residence in the community
  - 22 - community ties
  - 23 - past conduct
  - 24 - history relating to drug or alcohol abuse
  - 25 - criminal history
  - record of appearance at court proceedings
  - whether at the time of the current offense or arrest the  
defendant was on probation, parole or other release pending  
trial, sentencing, appeal or completion of a sentence; and



1 (4) the nature and seriousness of the danger to any person or the  
2 community that would be posed by Hunter Bow O'Mealy's release.

3 Of these factors, the weight of the evidence is the least important and the  
4 statute neither permits nor requires a pre-trial determination of guilt. *United States*  
5 *v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986); *Motamedi*, 767 F.2d at 1408; *Gebro*,  
6 948 F.2d at 1121.  
7

8 The Government has the burden of proving risk of flight by a clear  
9 preponderance of the evidence. *Motamedi*, 767 F.2d at 1406-07. The threat of  
10 flight must be serious. *United States v. Jamal*, 285 F.Supp.2d 1221 (D. Ariz.  
11 2003). See *United States v. Girodana*, 370 F.Supp.2d 1256 (So. Dist. Florida  
12 2005). Serious charges are not enough by themselves to justify detention on basis  
13 of flight risk. Drug use does not mean defendant poses flight risk. *United States v.*  
14 *Scott*, 450 F.3d 863 (9<sup>th</sup> Cir. 2006). The Government also has the burden of  
15 proving danger to the community by clear and convincing evidence. 18 U.S.C.  
16 §3142(f); *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985); *United States v.*  
17 *Portes*, 786 F.2d 758 (7th Cir 1985). The Court cannot detain merely if it  
18 determines that OR or PR will not prevent flight or danger to the community; it  
19 must nonetheless consider other conditions. *Orta, supra.*; 18 U.S.C. §3142.  
20  
21  
22  
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1                   **CONDITIONS OF RELEASE ARE APPROPRIATE IN THIS CASE**

2                   1.     The Nature and Seriousness of the Offense Charged.

3                   Hunter Bow O’Mealy is charged under #CR-00142-TOR, Eastern District of  
4 Washington, as follows: 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(vi), 846 Conspiracy to  
5 Distribute 400 Grams or More of Fentanyl (Count 1); 21 U.S.C. § 841(a)(1),  
6 (b)(1)(B)(vi) Distribution of 40 Grams or More of Fentanyl (Counts 2-3); and 21  
7 U.S.C. § 853 Forfeiture Allegations.  
8

9                   Of all the factors the Court has to consider concerning pre-trial release, the  
10 weight of the evidence is least important. *Motamedi*, supra at 1408. The evidence  
11 proffered by the Government is equally consistent with innocence as with guilt.  
12

13                   2.     History and Characteristics of Hunter Bow O’Mealy.

- 14                   • HUNTER BOW O’MEALY (born in the United States, and has lived  
15 in Washington all his life)

16                   • FAMILY:

17                   His family resides in the State of Washington, with the exception of  
18 his sister, who lives in Colorado. He would reside with his family in  
19 Packwood, Washington.

20                   • EMPLOYMENT:

- 21                   - Mr. O’Mealy has employment at White Pass Ski Lodge and would be  
22 under conditions of release including bond and electronic/GPS  
23 monitoring.  
24

1           3.     The Question of Flight or Failure to Appear.

2           Any failure to appear for any court appearance was because Mr. O'Mealy  
3 was arrested and incarcerated by the Federal Government. He has lived in the  
4 State of Washington for 18 years.

5           Hunter Bow O'Mealy need not show that release conditions will be  
6 equivalent of jail. The only need for conditions is that it will reasonably assure the  
7 defendant's presence. *Kin-Hong v. United States*, 926 F.Supp. 1180 (D. Mass.  
8 1996).

9           Clear and convincing evidence means that there must be proof that a  
10 particular defendant actually poses a danger, not that he in theory presents a  
11 danger. *United States v. Patriarca*, 948 F.2d 789 (1<sup>st</sup> Cir. 1981).

12           The presumption utilized by the plaintiff: 18 U.S.C. § 3142(e). The  
13 presumption in this drug offense case appears to be made to prevent flight. *United*  
14 *States v. Jessup*, 757F.2d 378, 395-98 (1<sup>st</sup> Cir. 1985).

15           If the presumption is invoked in this drug offense case such as this, the  
16 defendant need only present some credible evidence showing he is not a flight risk  
17 or danger to the community. *U.S. v. Alatishe*, 768 F.2d 364 (D.C. Cir. 1985); *U.S.*  
18 *v. Jessup*, 757 F.2d 378 (1<sup>st</sup> Cir. 1985); *U.S. v. Chimurenga*, 760 F.2d 400 (2d Cir.  
19 1985); *U.S. v. Perry*, 788 F.2d 100 (3d Cir. 1986); *U.S. v. Fortna*, 769 F.2d 243 (5<sup>th</sup>  
20

1 Cir. 1985); *U.S. v. Hazime*, 762 F.2d 34 (6<sup>th</sup> Cir. 1985); *U.S. v. Portes*, 786 F.2d  
2 758 (7<sup>th</sup> Cir. 1985); *U.S. v. Hurtado*, 779F.2d 1467 (11<sup>th</sup> Cir. 1985); *U.S. v. Freitas*,  
3 602 F. Supp. 1283 (N.D. Cal. 1985); *U.S. v. Moore*, 607 F. Supp. 489 (N.D. Cal.  
4 1985).

### 5 CONDITIONS OF RELEASE

6  
7 If this Court determines that a personal recognizance or unsecured release  
8 will not reasonably assure appearance, or will somehow endanger any other person  
9 or the community, 18 U.S.C. §3142(c) still mandates release subject to certain  
10 specific conditions. Those conditions may include house arrest. *United States v.*  
11 *Traitz*, 807 F.2d 322 (3rd Cir. 1986), *cert denied*, 493 U.S. 821 (1989). The Court  
12 may also impose conditions requiring a property bond, 18 U.S.C. §3142(c)(B) (xi);  
13 a bail bond, (xii); and require available medical, psychological or psychiatric  
14 treatment, (x).  
15  
16

17 In this case, Hunter Bow O'Mealy, through his attorney, avers the following  
18 conditions of pre-trial release are appropriate:  
19

20 1) 18 U.S.C. §3142(c)(B)(i): That Hunter Bow O'Mealy be allowed to  
21 live at his parents' home in Packwood, Washington, as his primary residence,  
22 under house arrest, with electronic monitoring.  
23  
24

1           2)    18 U.S.C. §3142(c)(B)(iv): That Hunter Bow O'Mealy not travel  
2 from Western Washington without prior approval of Pre-Trial Services, except for  
3 court appearances in Eastern Washington and any other travel restrictions the  
4 Court may impose.

5  
6           3)    18 U.S.C. §3142(c)(B)(v): That Hunter Bow O'Mealy has no contact  
7 with any witnesses in this case.

8           4)    That Hunter Bow O'Mealy complies with all rules and regulations of  
9 Pre-Trial Services.

10  
11           5)    18 U.S.C. §3142(c)(b)(xi): That Hunter Bow O'Mealy report as  
12 ordered by the Court to the Pre-Trial Services located in Spokane, Washington.

13           6)    18 U.S.C. §3142(c)(B)(viii): That Hunter Bow O'Mealy refrain from  
14 possessing a firearm, destructive device, or other dangerous weapon.

15  
16           7)    18 U.S.C. §3142(c)(B)(x): That Hunter Bow O'Mealy refrain from  
17 the use of alcohol, any narcotic drug or any other controlled substances, including  
18 marijuana, except that as prescribed by a licensed medical practitioner.

19  
20           8)    If ordered, Hunter Bow O'Mealy would comply with all rules and  
21 regulations for electronic monitoring, including paying for the full cost of any such  
22 electronic monitoring.

23           9)    That Hunter Bow O'Mealy remains employed.  
24

1           10) That Hunter Bow O'Mealy complies with any curfew hours as  
2 ordered by the Court.

3           11) That Hunter Bow O'Mealy and his family shall execute an agreement  
4 to forfeit, upon Hunter Bow O'Mealy's failure to appear as required, property of a  
5 sufficient unencumbered value, including money, as is reasonably necessary to  
6 assure his appearance. He and his family will provide the Court with proof of  
7 ownership of the value of the property, along with information regarding existing  
8 encumbrances as the Court may require.  
9

10           12) That Hunter Bow O'Mealy cooperate with authorities in the collection  
11 of a DNA sample, if any is required.  
12

13           13) 18 U.S.C. §3142(c)(12)(xii): Alternatively, that Hunter Bow O'Mealy  
14 and his parents execute a bail bond with solvent sureties in an amount determined  
15 by the Court.  
16

17           14) That Hunter Bow O'Mealy appears at all future hearings.

18           15) That Hunter Bow O'Mealy sign all documents required by the Court.  
19

20           16) That Hunter Bow O'Mealy contacts his attorney, Mark E. Vovos, at  
21 least twice per week.

22           17) That Hunter Bow O'Mealy surrender his passport, if he has one, and  
23 not apply for a new one during the pendency of this case.  
24

1           18) That Hunter Bow O'Mealy submits to UA testing as directed, as well  
2 as any substance abuse evaluation and recommended treatment.

3           19) That Hunter Bow O'Mealy will wear a GPS monitoring device at all  
4 times and in compliance with all conditions of Pre-Trial Service concerning  
5 wearing of an electronic device.  
6

7           It is respectfully submitted that this combination of conditions will secure  
8 Mr. O'Mealy's attendance at trial and address any concern that the Court may have  
9 concerning Hunter Bow O'Mealy's danger to the community or to any person.  
10

11           RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of November, 2021.

12                               /s/ Mark E. Vovos, #4474

13                               Attorney for Hunter Bow O'Mealy

14                               2127 S. Pittsburg

15                               Spokane, WA 99203

16                               Phone: (509) 326-5220

17                               E-mail: [mvovos@mvovos.digitalspacemail8.net](mailto:mvovos@mvovos.digitalspacemail8.net)  
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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Stephanie Van Marter  
Assistant United States Attorney  
U.S. Attorney's Office - SPO  
920 W. Riverside, Suite 300  
P.O. Box 1494  
Spokane, WA 99210-1494  
[stephanie.vanmarter@usdoj.gov](mailto:stephanie.vanmarter@usdoj.gov)

Richard Barker  
Assistant United States Attorney  
U.S. Attorney's Office - SPO  
920 W. Riverside, Suite 300  
P.O. Box 1494  
Spokane, WA 99210-1494  
[richard.barker@usdoj.gov](mailto:richard.barker@usdoj.gov)

s/ Mark E. Vovos, #4474

Attorney for Hunter Bow O'Mealy  
2721 S. Pittsburg  
Spokane, WA 99203  
Phone: (509) 326-5220  
E-mail: [mvovos@mvovos.digitalspacemail8.net](mailto:mvovos@mvovos.digitalspacemail8.net)